IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.Rev.Pet.No. 777 of 1998(G)

C.C.NO.325/1998 OF THE JUDL.MAGISTRATE OF THE FIRST CLASS-IV, KOZHIKODE
CRL.A.NO.105/1997 OF THE SESSIONS COURT, KOZHIKODE DIVISION

REVN. PETITIONER:

GAFOOR,
S/O.ABDURAHIMAN,
WEST HILL AMSOM OF
KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

THE CIRCLE INSPECTOR OF POLICE,
NADAKKAVU, KOZHIKODE DISTRICT
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, ALONG WITH CRL.R.P.NO.845/1998 AND CRL.R.P.NO.1334/2002 THE COURT ON 17/09/2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3977/1998 IN CRL.R.P.NO.777/1998

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

17/09/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.Nos.777/1998, 845/1998 and 1334/2002

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Dated this the 17th day of September, 2007

O R D E R

Crl.R.P.No.777/1998 is filed by the second accused in C.C.No.325/1993 and Crl.R.P.No.845/1998 is filed by the fourth accused therein and Crl.R.C.No.133/1998 is filed by the third accused. Altogether, there were eight accused of whom accused 1 and 6 are still absconding. Accused 7 and 8 were acquitted by the appellate court. Accused 5 has not filed any revision. The accused stands convicted and sentenced to undergo simple imprisonment for six months for the offence under Section 120B I.P.C, to undergo simple imprisonment for six months for the offence under Section 342 read with Section 149 I.P.C and to undergo simple imprisonment for three years for the offence under Section 457 read with Section 149 I.P.C and to undergo simple imprisonment for three years for the offence under Section 380 read with Section 149 I.P.C, with direction that the sentences shall run concurrently.

2. It is the prosecution case that on 01/08/1992 in between 3 a.m to 4 a.m in the night, in pursuance of the criminal conspiracy among

the accused, accused 1 to 6 committed lurking house trespass by night, entering into Krishna Menon Museum and Art Gallery, Kozhikode, and committed theft of paintings of Raja Ravi Varma and Madhava Menon with the intention to sell the same to the purchasers in foreign countries.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 20, Exts.P1 to P19(a) and MOs.1 to 11 series. The defence examined DWs.1 and 2 and got marked Exts.D1 to D2(a).

4. The prosecution mainly relied on the evidence of PW.3, the driver of KL 8/A 2813 jeep in which the accused travelled from Perumbilavu, a place in Thrissur District to Kozhikode. He has testified that he was acquainted with the A1, who is a person residing at the place of PW.3. He has stated that A1 was a driver earlier and, thereafter, he was working with certain financial outfits for forcibly taking possession of vehicles. He has stated that on 31/07/1992 the previous day at about 2.30 p.m., as instructed by A1 he reached the place to pick up A1 and at the place A6, A7 and A8 along with A1 were waiting. He is acquainted with the above persons except A6. He has identified A7 and A8 standing at the dock. He has stated that

A1, A6 and A7 entered the jeep. A8 did not accompany them. The vehicle was taken to Kozhikode to West Hill and the vehicle stopped in front of a house and another four persons also entered the jeep. He has identified the above persons as A2, A3, A4 and A5. Thereafter, they went to a Bar. He waited outside. Subsequently, he was also called inside. He consumed two pegs of liquor. The time then was at about 9 p.m. Then they went to take food and to see a film. On the way A7 got out of the jeep and went away saying that he is having pain in the leg. Subsequently, they went to a hotel to take food and saw a film by name 'Neelakurukkan'. It was raining. Thereafter, the jeep was taken to a place which looked like a ground. The time was then about 3.30 a.m. At the place all of them got down from the jeep and A6, Kader stood near the jeep. Others went somewhere else. A6 told him that they have gone to bring some photos and there will be no problems. Then he heard some cries. Immediately he started the vehicle. But A6 stopped him. At that time two of the accused, i.e. A1 and A4 came running to the jeep. A1 pushed him away from the driver's seat and took the vehicle towards the compound nearby. At that time three of the accused came with a photo. PW.3 then objected their entering the vehicle. At that time A1 asked them to come near the bridge through another route. He has identified the persons who

brought the photograph as A2, A3 and A5. On the way, two persons signalled to stop the vehicle, A1 stopped the vehicle and to their queries, A1 told that they are going on a tour and he said that they came through a wrong way. The above persons noted the vehicle number flashing a torch light. Near the bridge, the three accused along with the photographs entered the vehicle. The vehicle was taken back to Perumpilavu. On their way, A6 Kader got down saying that he shall come with the cash required. Thereafter the vehicle was stopped in front of the house of A8 and, A8 was called out of the house and the photographs were taken inside the house. Then they went to the place from where the accused had earlier boarded the jeep when the journey commenced. He was asked to come in the evening to collect the fare. He has also identified the trip sheet book and his signature in Ext.P2 mahazar.

5. PW.1 is the U.D Clerk at the Krishna Menon Museum and Art Gallery, who lodged F.I.S on 01/08/1992 alleging that five pictures exhibited in the first floor of the Art Gallery were found stolen.

6. PW.2 is the attender of art gallery. At the time of his examination he was working as attender in the art gallery. At the

time of the incident he was working as newspaper agent as well as a daily wages at the Art Gallery. He has stated that on 01/08/1992 at about 4 a.m., he heard loud screaming and the words 'thief, thief, Chidambaretta, Vasuvetta, odivaru' from the art gallery while he was on his way on his bicycle to collect newspapers of the particular day. At that time he saw two persons whose faces were covered with a black cloth who were found carrying on the shoulders an article like a board. He stood away to the side of the road. After they left, he went to East Hill Secondary School and called the watchman who also told that he heard the distress call and both of them took a stick and torch and went to the art gallery. At the gate of the art gallery, they heard the sound of a jeep. Under impression that the vehicle is police night patrol, he signalled to stop but the vehicle did not stop and after sometime, the vehicle came back. He again signalled to stop the vehicle and it stopped; and he noted the number of the jeep. There was a driver and two others in the front seat of the jeep and there were some persons in the back. He asked them where they were going and the driver told that they were going on a tour. He recollected the number of the jeep as KL 8/A 2813. He has identified A1 and A3 as well as PW.3. He has identified A1 as the person who was driving the vehicle. He and Chidambaran(PW.5), the watchman

of the school, went to the art gallery, and at the place they met PW.4 the watchman of the art gallery as well and one Damodaran and one Ranganatha Pillai (PW.17) a staff of the Pazhassi Raja Museum. It was found that the watchman and the attender was locked inside and certain articles robbed. The lock of the gallery was found broken.

7. PW.4 the watchman of the art gallery has stated that his duty starts at 4.30 p.m to 7.30 a.m. In the morning and on the particular night, he was on duty and that the art gallery used to be closed and locked at 5 p.m. It was on the upstair portion hall that the photos are exhibited. At 5 p.m., the door used to be locked and key entrusted with PW.1, the curator. At the time of closing the door, the photos used to be verified. He was sitting in the staff room and he heard sounds of somebody walking upstairs. When he tried to open the door, it was found locked from outside and somebody moving wearing black pardah. Then he cried loud, 'thief, thief, Damodara, Vasu' to alert the persons who were in the other staff room outside the gallery. He cried out loud for about 10 minutes then he heard somebody getting down the stairs. One person was found carrying the photographs.

8. PW.5 Chidambaran the watchman of the Higher Secondary School, East Hill has also deposed as stated by PW.4 as to hearing cries and as to their proceeding to the spot and as to signalling to stop the vehicle etc. He has also recollected the number of the jeep. He could not identify the accused. He has also stated that the lock of the door to the gallery was broken.

9. PW.17 is Ranganatha Pillai, a gardener of Pazhassi Raja Museum, East Hill who has also spoken to about the hearing of the cries. It is his version that on hearing the distress call of PW.4 at a particular time, he went to the art gallery and found PW.4 inside the room locked from outside. He opened the door after getting the key. After sometime PWs.4 and 5 came to the scene. I find that the version of PWs.2, 4, 5 and 17 corroborate on material particulars.

10. PW.18, the Investigating Officer has testified as to the arrest of the accused and the recovery of the portraits, that is, MOs.1 to 5 as per the confession statement of A1, which is recorded as Ext.P12. Ext.P7 is the recovery mahazar. The same was recovered from the property of Kader alias Abdul Kader.

11. The main contention is that the evidence of PW.3 is unreliable as he is a person closely associated with the accused throughout the operation and that he ought to have been placed in the accused array. But the courts below have considered the plight of PW.3 and the probable reaction of a person placed in such circumstances. As observed by the courts below, probably he thought of his own safety. Both the courts below have considered the above contention of the defence and discarded the same; and rightly so. The contention that non holding of the identification parade is fatal was also rejected in view of the fact that PW.3 had sufficient opportunity to identify the accused from 2.30 p.m to 7.30 a.m on the next day. Further more, they had food and drinks together. Some of the accused are also people belonging to his native place and known to him earlier.

12. The alleged delay in registering the crime also I find is not that material in the circumstances. It is only the phone call that the police received in between 4 to 5 a.m and that the authorities are not bound to register the F.I.R just on receipt of a telephone call. F.I.R has been registered at 9 a.m, after PW.1, the curator reached the place and examined the details of theft. I find that the above contention as to the delay has no merits. In the circumstances, I find no reasons to

deviate from the findings of the courts below. The conviction for the offences under Section 120B, 457, 380 read with Section 149 I.P.C is upheld.

13. The counsel for the revision petitioners have pleaded for leniency pointing out that almost 15 years have elapsed since the date of the incident and the commencement of the proceedings. It is pleaded that considering the above aspect, the accused may not be ordered to be imprisoned. Of course, there is considerable delay but considering the gravity of the offence, I find that avoiding imprisonment would not be proper.

In the circumstances, the sentence imposed on the accused/revision petitioners is modified to:-

For the offence under Section 120B I.P.C to undergo simple imprisonment for one month each and to pay a fine of rupees five thousand each; for the offence under Section 342 read with Section 149 I.P.C to undergo simple imprisonment for a term of three months each and to pay a fine of rupees five thousand each; for the offence under Section 457 read with Section 149 I.P.C to undergo simple imprisonment for three months each and to pay a fine of rupees five

thousand each; for the offence under Section 380 read with Section 149 I.P.C to undergo simple imprisonment for six months each and to pay a fine of rupees five thousand each. The default sentence for failure to pay the fine amount would be six months each. Set off allowed, as per the order of the court below, is sustained.

The criminal revision petitions are disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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1334/2002

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17th September, 2007